IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

APPEAL FROM ORDER NO.294 OF 2005

1. Sabir S/o Sri Abdul Rehman
2. Smt. Bhuri W/o Sri Sabir,
   (Both R/o Village Bhojpur, Distt. Muradabad)

..... **Appellants**

Versus

1. The New India Assurance Co. Ltd., Haldwani, Nainital
2. Smt. Haruli Devi @ Smt. Ganga Devi,
   W/o Late Sri Udiya Nand
3. Sri Gopal Dutt @ Gobind Prasad
   S/o Late Sri Udiya Nand
4. Sri Mohan Chand S/o Late Sri Udiya Nand
5. Sri Ganesh Chand S/o Late Sri Udiya Nand
6. Sri Harish @ Girish Chand, S/o Late Sri Udiya Nand,
   (Respondent Nos.2 to 6 all are R/o Village Kannaori, Tehsil Ranikhet, District Almora)

..... **Respondents**

Sri I.S. Mehra, learned counsel for the appellants.
Sri M.K. Goyal, learned counsel for the respondent No.1

Dated: 16.06.2006

Coram: Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.

The present appeal has been filed by the appellants against the judgment and award dated 02.06.2005 passed by Motor Accident Claims Tribunal/ District Judge, Nainital (***hereinafter will be referred to as the Tribunal***) in Motor Accident Claims Case No.220 of 2002, by which the Tribunal partly allowed the claim petition of the appellant/claimants and awarded a sum of Rs.2,70,000/- as compensation. It has also been ordered by the Tribunal that in case of failure in payment of said amount within a period of two months from the date of order, the claimants shall get simple interest at the rate

of 6% per annum from the date of petition till the date of payment.

2. Brief facts of the case giving rise to the present appeal are that on 1.2.2000, Sri Nadir (the deceased) was going Ranikhet, District Almora from *Maasi* via *Jalli* while travelling in Jeep Car No.HR-26/H-6678 and at 3:15 p.m. when he reached at Village *Ida Tok Jagani near Roll Barakhama, Patri Ida,* Tehsil Ranikhet, due to the rash and negligent driving of the driver of the Jeep, the said Jeep fell down into a deep George. Due to the said accident, Sri Nadir received grievous injuries and he died on the spot. The other passengers who were traveling in the said jeep were also succumbed to injuries. It was alleged in the claim petition that the deceased was a hale and hearty person and he was having his own business of selling blankets and was earning Rs.4,500/- p.m. It was alleged that owing to the said accident, the claimants of the deceased had to suffer the loss of affection. The claimant/ appellants filed the claim petition before the Motor Accident Claims Tribunal for compensation amounting to Rs.6,50,000/-

3. The Opp. Party Nos.1/1 to 1/5 even after serving of the notice did not turn up and no written statement was filed on their behalf, therefore, the case was directed to be proceeded ex-parte against Opp. Party Nos.1/1 to 1/5.

4. The Opp. Party No.2- New India Assurance Co. contested the claim petition and filed Paper No.13-Kha as his written statement and refuted all the contents of the claim petition and stated that with regard to the death of

the deceased, the claimants have to prove all the documents with the support of witnesses. It was also alleged that answering opp. Party was not given any information regarding the accident in question. It was further alleged that the vehicle in question was being driven in violation of the provisions of the insurance conditions and the driver was also not having valid driving licence at the time of the accident. It was also alleged that the claimants have moved the claim petition with an extraneous and unnecessary compensation, therefore, the claim petition is liable to be dismissed against the answering opp. party.

5. On the pleadings of the parties, the Tribunal framed necessary issues and after appreciating the evidence adduced by the parties, the Tribunal allowed the claim petition for Rs.2,70,000/-. It was also ordered that It has also been ordered by the Tribunal that in case of failure in payment of said amount within a period of two months from the date of order, the claimant shall get simple interest at the rate of 6% per annum from the date of petition till the date of payment. Feeling aggrieved, the claimant have come up in this appeal for enhancement of the amount of compensation.

6- We have heard learned counsel for the parties and perused the entire evidence available on record.

7- The submission raised by the learned counsel for the appellants is that the monthly income of the deceased as has been assessed by the Tribunal is not based on the evidence on record but merely on conjecture and surmises. It has also been submitted that the age of the parents of the deceased has been considered wrongly and the multiplier on the age of the

parents of the deceased is also against the provision of law. It is also submitted that the rate of interest awarded by the Tribunal is also very low.

8- The record reveals that the deceased Nadir was aged about 24 years at the time of the accident and he was selling the blankets thereby earning Rs. 4,500/- per month. No cogent and reliable evidence has been adduced by the claimants in order to establish the income of the deceased. However, the evidence reveals that Sabir Ali P.W.1 has deposed in his evidence that his son was a sales agent of A.B. Sales Ludhiyana and was earning Rs. 4,500/- per month. A certificate has been filed by the claimants in order to show the salary of the deceased which indicates that the deceased was earning Rs. 4,500/- per month but this paper cannot be said to be authentic as this document has not been proved by the person was has issued the same. No document has also been produced before the Tribunal by which it could be established that the deceased was actually getting Rs. 4,500/- per month as salary. Further, in the claim petition it has been averred that the deceased had his own business of selling the blankets but in the evidence the claimants have deposed that the deceased was working as a sales agent of A.B. Sales Ludhiyana thereby getting a salary of Rs. 4,500/ per month. Therefore, we are of the view that there is no cogent and reliable evidence in order to show the income of the deceased. However this aspect cannot be ignored that the deceased was selling the blankets and thereby must be earning approximately Rs. 100/- per day from his job. A daily wage labourer also use to earn now a days approximately an amount of Rs. 100/- per day. The respondents have not filed any evidence in order to show that the deceased was not engaged in the occupation of selling the blankets. Therefore, we can safely infer that

the deceased must be getting approximately an amount of Rs. 3000/- per month from his occupation of selling the blankets. In case had the deceased been alive then he would have invested 1/3rd amount out of the aforesaid amount against his personal expenses, therefore, the financial dependency of the claimants on account of the death of deceased comes to Rs. 2000/- per month.

9- As the deceased was an unmarried person therefore the amount of compensation is to be calculated on the basis of the age of the claimants who are the parents of the deceased. The claim petition shows that the age of the claimants is 50 and 45 years respectively. P.W.1, Sabir Ali who is the father of the deceased has also stated his age as 52 years at the time of his deposition before the court on 25-4-2005. Therefore, in any case the age of the parents of the deceased cannot be more than 50 years at the time of the accident. Keeping in view the age of the parents a multiplier of 13 would be just and proper in view of Schedule appended U/S 163-A of the M.V.Act and after adopting the multiplier of 13 the total amount of compensation comes to Rs. 2000/- X 12= 24000/- X 13= Rs. 3,12,000/-.

10- On the basis of the assessment of evidence on record we come to the conclusion that the claimants are entitled for an amount of Rs. 3,12,000/- as compensation.

11- Apart of the aforesaid amount, the Tribunal vide its impugned judgment dated 2-6-2005 has also awarded an amount of Rs. 6000/- under different heads and this amount awarded by the Tribunal is not to be disturbed at all.

12- As far as the rate of interest indicated by the Tribunal in the impugned judgment and award is concerned, the same also does not require any interference.

13- For the reasons stated above, we are of the view that the appeal is liable to be partly allowed. The amount of compensation to be awarded in favour of the appellants comes to Rs. 3,12,000/- + Rs.6000/- = Rs. 3,18,000/- along with interest indicated in the impugned judgment and award instead of an amount of Rs. 2,70,000/- as has been awarded by the Tribunal.

14- Accordingly the appeal is partly allowed. The impugned judgment and award dated 2-6-2005 passed by MACT/District Judge, Nainital in MACP No. 220/2002 is modified up to the extent that the claimants are entitled to get compensation of Rs. 3,18,000/- alongwith the interest indicated in the impugned judgment and award, instead of Rs. 2,70,000/-, as has been awarded by the Tribunal. No order as costs.

(B.C.Kandpal, J.) **(P.C.Verma, J.)**

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